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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1120

ASSOCIATED PIPELINE CONTRACTORS, INC., TRAVELERS INSURANCE COMPANY, and J. RAY McDERMOTT & COMPANY, INC.,
Petitioners,

versus

ALVIN E. DAVIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

ASSOCIATED PIPE LINE CONTRACTORS, INC., TRAVELERS INSURANCE COMPANY, and J. RAY McDERMOTT & COMPANY, INC.,
Petitioners,

versus

ALVIN E. DAVIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on November 13, 1969, rehearing denied, December 16, 1969.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court, Western District of Louisiana is unreported. The opinion of the United States Court of Appeals is unreported.

For convenience, the District Court's opinion and judgment are printed in Appendix "A". The Court of Appeals' opinion and judgment are Appendix "B".

A motion for rehearing is attached hereto as Appendix "C". The denial thereof is Appendix "D".

JURISDICTION

The judgment of the Fifth Circuit Court of Appeals was entered on November 13, 1969. The jurisdiction of this Court is invoked under 28 U. S. C. A. 1254(1).

QUESTION PRESENTED

The question presented by this case is whether a vessel owner—admittedly under a duty to furnish a seaworthy vessel including means of ingress and egress to those working aboard the vessel—discharges his duty by furnishing a method universally used in the industry and which is shown to be the best known method.

STATUTES INVOLVED

The statute involved in this case is 46 U. S. C. A. 688.

STATEMENT

This is an action for damages brought under the Jones Act and general maritime law.

The plaintiff, Alvin Davis, alleged that he sustained injuries to his back when the ladder he was using to go from an offshore pipe laying barge owned by J. Ray McDermott & Co., Inc. was picked up or lifted

by the the stern of a crewboat which he was attempting to board.

Suit was brought against McDermott, Associated Pipe Line Contractors, Inc., plaintiff's employer and a subcontractor of McDermott, and Travelers Insurance Company, the insurer of both.

Plaintiff bases his suit on the alleged negligence of McDermott and Associated through their representatives, but primarily on the alleged unseaworthiness of the ladder provided.

The ladder and others like it were located at points around the vessel, McDermott Derrick Barge 12.

It is undisputed that at the time of the accident most of the laborers attached to the barge were being sent ashore due to a temporary breakdown of the barge equipment. The plaintiff and his co-workers were being transported to shore in three small crewboats. The plaintiff was the last of seventy-nine workers to board a crewboat. It was during this maneuver that the plaintiff was jarred or jerked by the movement of the crewboat.

A third-party action was filed by the defendants against Offshore Crewboats, Inc., as the owner of the crewboat.

Trial was held in United States District Court, Western District of Louisiana, Lake Charles Division.

The District Court found that both the contractor defendants, through their representatives, were negligent and that the tire ladder was unseaworthy, and assessed damages of $45,000.00 reduced by negligence of the plaintiff to $30,000.00.

Judgment was subsequently rendered rejecting the third-party demand.

REASONS FOR GRANTING THE WRIT

It is submitted that the District Court in holding the ladder unseaworthy had recourse to a much higher standard than the reasonable fitness test set out in *Mitchell v. Trawler Racer, Inc.*, 362 U. S. 539, 80 S. Ct. 926 (1960).

In paragraphs 16 and 17 of its findings of fact, the District Court listed five factors that it concluded constituted negligence and/or unseaworthiness. Such a merger of doctrines runs counter to the holding of this Court in *Mitchell v. Trawler Racer, Inc.*, supra, to the effect that there has been a complete divorcement of unseaworthiness liability from concepts of negligence (Page 993).

In spite of the pronouncement of *Mitchell v. Trawler Racer, Inc.*, supra, the Court applied a test of seaworthiness to DERRICK BARGE 12 that held the vessel owner to a far higher test of seaworthiness than any test applied to a vessel under similar circumstances. The court further held that the transferred to transfer personnel from the vessel to a crewboat in what it termed heavy seas under the circumstances. The court further held that the transferred

operations did not afford Davis a reasonably safe means of departing from the barge. The Court used as its criteria the cases of *Tate v. Willis*, 154 F. Supp. 402, and *Superior Oil Company v. Trahan*, 204 F. Supp. 627, affirmed *Superior Oil Company v. Trahan*, 322 F. 2d 234 (1963). The thrust of these opinions was that there was no means provided for the transferral of personnel from ship to ship, and therefore the vessels were unseaworthy with respect to any attempt made to transfer personnel from one ship to another.

The recent case of *Massey v. Williams-McWilliams, Inc.*, 5 Cir. 1969, 414 F. 2d 675, re-affirmed the holdings of *Superior Oil Company v. Trahan*, supra, and *Tate v. Willis*, supra, holding that a shipowner has the fundamental duty to supply a reasonably safe egress for crew members. In the present case, the Court held that "there is just no safe way to transfer personnel from it to a small crewboat in heavy seas under the total circumstances".

The ipso facto determination by the District Court that the vessel was unseaworthy transcended the test of *Mitchell v. Trawler Racer, Inc.*, supra. The cases of *Tate, Trahan,* and *Massey* turned on the question of whether or not a conventional means of transferral was afforded the members of the crew.

The present case turned on the plaintiff's failure to successfully transfer from the barge to the crewboat and nothing more. The record disclosed that seventy-nine men had preceded Davis to awaiting crewboats from the same location on the barge, and all without incident (R. 1210, 1211, 1212). The duty im-

posed by *Mitchell* is reasonable fitness. The plaintiff, Davis, did not allege or prove a defect in the appurtenance he was obliged to use (R. 227).

The recent case of *Bilger v. Maritime Overseas Corporation*, 304 F. Supp. 1024 (1969) correctly stated the problems involved in the transferral of personnel from ship to ship.

> "It is obvious that the transfer of a person from a bobbing launch at sea to a rope ladder hanging down the side of a rolling vessel is one that requires a considerable degree of physical coordination and agility. The same can be said of many functions required of seamen in the normal routine of operating a vessel." *Bilger v. Maritime Overseas Corporation*, supra, at page 1027.

The District Court's holding will have serious consequences to the relatively new offshore pipeline industry. The method employed here was adopted after several years of testing all known maritime devices which might conceivably meet the unusual problem of the industry, i.e., the mass transferral of personnel in an open sea.

The court below commended McDermott on its efforts to improve safety in this precise area, and observed that the defendants honestly believed this transferral method to be the safest.

At no time in the trial was any method suggested by any witness which McDermott—one of the largest

pipeline contractors in the industry--had not tested and rejected.

The defendants are now placed in the dilemma of either continuing to utilize a transferral method which has been held to be unseaworthy or of employing methods which its own experience shows to be more dangerous.

In effect, the vessel owner has been made a guarantor of the safety of anyone aboard.

CONCLUSION

Petitioners now find themselves arguing the test of seaworthiness in the face of a holding that rejected any means of transferral as meeting the test of seaworthiness. The holding of the District Court had the all too obvious effect of establishing a duty of extraordinary care upon the vessel owner and should therefore be reversed to conform to the jurisprudence established by this Honorable Court.

Respectfully submitted,

HOLT & WOODLEY
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Lake Charles, Louisiana 70601
Attorneys for Petitioners

January ____, 1970.

EDMUND E. WOODLEY

CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing has been served upon:

Mr. William B. Baggett
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Attorneys for Respondent,
Alvin E. Davis

and

Mr. Francis Emmett
2141 International Trade Mart Building
2 Canal Street
New Orleans, Louisiana 70130
Attorney for Offshore Crewboats, Inc.

by depositing same in the United States Mail, postage prepaid and addressed to their above office addresses.

Lake Charles, Louisiana, this ____ day of _____, 19____.

_____

EDMUND E. WOODLEY

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION No. 12,768

ALVIN E. DAVIS

versus

ASSOCIATED PIPE LINE CONTRACTORS, INC.;
TRAVELERS INSURANCE COMPANY; and
J. RAY MCDERMOTT & COMPANY, INC.
Third Party Defendant:
OFFSHORE CREWBOATS, INC.

Filed: Jun. 21, 1968

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HUNTER, JUDGE:

Petitioner cumulates three causes of action against his employer, Associated Pipe Line: (1) under the Jones Act, 46 U.S.C.A. §688 for personal injuries allegedly sustained; (2) under General Maritime Law because of the alleged unseaworthiness of Derrick Barge No. 12 for the same injuries, and (3) under General Maritime Law for maintenance and cure. Joined also as a defendant under the Maritime law is J. Ray McDermott Company, the owner of the barge.

Defendants answered the suit, denying both negligence and unseaworthiness, and in addition filed a third party demand against Offshore Crewboats, Inc., alleging on information and belief that the plaintiff was injured while boarding the crewboat AILINE ELIZABETH II; and that his injuries, if any, resulted from the unskillful handling of the crewboat in violation of the express obligation in the charter agreement to furnish a competent crew. Shortly before trial (less than ten days before) counsel for defendants amended their third party demand to plead that plaintiff was injured while boarding the ALICIA VICTORIA or the PARAMOUNT, crewboats owned by Offshore, Inc. Concededly, this turn of events presented a new problem as between defendants and third party defendant. Consequently, we severed the third party demand as

to the issues raised by this amendment. Counsel for third party defendant was certainly correct in his contention that this involved new issues and he was entitled to the usual legal delays. The case proceeded to trial as between plaintiff and defendants and the third party defendant only insofar as AILINE, ELIZABETH II. This action was without prejudice to defendants' right to be afforded an opportunity to prove that the ALICIA VICTORIA and/or the PARAMOUNT were involved. However, this contest between defendants is not to delay the final determination between plaintiff and defendants. This case had been set for many months and plaintiff should not be delayed because of later developments between defendants.

The trial began on March 5, 1968. It was concluded on March 14, 1968. Everything is in dispute. All issues were vigorously contested. Defendants obviously doubt that Mr. Davis was hurt on the job. We make findings and state conclusions:

FINDINGS OF FACT

1. Alvin E. Davis is a resident of Calcasieu Parish, Louisiana. Associated Pipe and J. Ray McDermott are foreign corporations authorized to do and doing business in the State of Louisiana.

2. At all times pertinent J. Ray McDermott was the owner and operator of Drilling Barge 12, a 500-ton capacity water crane barge, 400 feet long, 100 feet wide, with a depth of 28 feet.

3. At all times pertinent, Derrick Barge 12 was located some fifty miles South of Leeville, Louisiana, on the Continental Shelf, and was engaged in laying a 22" pipe-line for Gulf Oil Corporation.

4. At all times pertinent Associated Pipe was a subcontractor furnishing a part of the skilled labor in the said pipe laying work.

5. Derrick Barge 12 was a vessel with the contemplation of the Jones Act and Alvin E. Davis was a member of the crew of that vessel within the meaning of the Jones Act.

6. On June 9, 1966, Alvin E. Davis was employed aboard Derrick Barge 12 as a fork-lift operator. His immediate employer was Associated Pipe.

7. On June 9, 1966, Davis and some 79 other employees of Associated Pipe were leaving the barge to return to shore, pending equipment repairs.

8. These employees of Associated Pipe were disembarking from Derrick Barge 12 into a crewboat which would take them to shore.

9. At least three crewboats were in use for this purpose. Two had already received a capacity number of passengers and departed. Alvin E. Davis was the last employee to get into the last crewboat.

10. We do not know the name of the crewboat nor the owner of it. The case as between the defendants and the third party defendant is to remain open if either party wishes it so. We would like to resolve the identity of the crewboat involved.

11. The means of transferral utilized by Alvin E. Davis and the other Associated Pipe employees was ladders made of rubber truck tires strung on steel cables which were mounted at intervals on the barge between wooden fenders made of 12" x 12" timbers.

The truck tires were of various sizes. They were hung in irregular and various heights from the water line.

12. Derrick Barge No. 12, at the time of the accident (June 9, 1966) was not equipped with any other type ladder or appliance to assist the crew members in getting off the barge except for these rubber truck tires.

13. At all pertinent times the crewboat on which plaintiff departed came alongside on the windward side of the derrick barge. There were five to seven-foot seas and five to six-foot ground swells. Good seamanship dictated that the crewboat should have come alongside on the leeward side. Plaintiff descended on the rubber tires and was standing on the second tire from the top when suddenly the bottom tire in the string and the tire on which plaintiff stood was picked up 1-1/2' to 2' by the bobbing crewboat. When the crewboat "dropped," plaintiff was jarred, and in the process twisted and injured his back.

14. At the time the tire was struck by the crewboat, the crewboat stern had drifted out at an angle of approximately 45° from the side of the barge, and the plaintiff was attempting to board the crewboat approximately ten feet back from the bow.

15. The selection of a safe berth is in general the responsibility of the crewboat operator, but the barge captain did have the final say.

16. All witnesses emphasized that transferral in open sea is an extremely hazardous undertaking. This 500-ton capacity derrick barge is one of approximately six in the entire world of its size. *The Court feels that there is just no safe way to transfer personnel from*

it to a small crewboat in heavy seas under the total circumstances.

17. The transferral operation as it related to Davis did not afford him a reasonably safe means of departing from the barge *and resulted in both unseaworthiness as found in Tate v. Willis, 154 F. Supp. 402, and actionable negligence under the Jones Act. Trahan v. Superior Oil Co., 204 F. Supp. 627.* This negligence and/or unseaworthiness consisted of a combination of factors, namely:

(1) Bringing the crewboat along the windward side of the barge.

(2) Permitting Davis to begin his descent when the stern of the crewboat had drifted out.

(2) Permitting Davis to begin his descent as the bow was "bobbing up and down" and striking the tire.

(4) The practice of using finders or bumpers made of truck tires as a ladder under these circumstances as the only means of disembarking was an unsafe practice.

(5) There was no reasonable safe means of disembarking from Barge No. 12 furnished to Davis at the pertinent time.

18. The defendants are constantly trying to improve the safety of their operations at sea and are to be commended. We find also that at the time of this acci-

dent they seriously believed that the method of transfer which was being used was the best, and that it was customary in the trade. However, we do point out that what is customary is evidence of due care — here, the reasonable fitness element on the concept of seaworthiness — but merely because something is customary is not the legal measure of the duty to furnish a seaworthy. *JUNE T, INC. v. King* (5 Cir., 1961) 290 F. 2d 404.

19. *As for the crewboat, we feel that the operator of the crewboat was negligent.* We do not know its identity or its owner. However, the obligation of Associated Pipe and McDermott to Davis remains. They were obligated to furnish him a safe method of ingress and egress. They did not do so. The failure to do so was a proximate cause of his injury. Associated Pipe and McDermott cannot contract away this obligation.

20. Defendant argues that Davis's contributory negligence was so great as to reduce the award in this case to a minimum. In view of the fact that some 79 men preceded Davis without incident, we should examine the actions of plaintiff closely. Plaintiff testified that when he got ready to get on the boat the stern had drifted away, and in relation to the barge was lying at a 45° angle. He then attempted to get on the crewboat at the angle of the bow. The stern line had been released. He was the only one to get on the crewboat after it had been released. Most of the witnesses were of the opinion that if the boat was properly tied up — that is, against the barge — the tires would not be lifted, and that the proper way to board a crewboat is from the stern. Mr. Davis was

an experienced man. He was fully cognizant of the danger involved in making the transfer. He argues that he was using the only method available in making the transfer and therefore should not be held contributorily negligent. This would be cogent only if in so doing he had exercised reasonable care. His failure to request help from the captain of the crewboat or the barge personnel or to call attention in any other way to minimize his own danger was, in our opinion, a proximate cause of his injury. See *Trahan v. Superior Oil Company*, 204 F. Supp. 627, affirmed Fifth Circuit, 322 F. 2d 234, and the discussion there concerning the comparative negligence ruling. In *Trahan* it was held that the plaintiff's fault had contributed to the extent of 75%. We do not believe that the plaintiff's negligence in this case contributed to that degree. We find that Davis was negligent and that his fault contributed to the extent of 33-1/3%. Defendants will therefore be liable for only 66-2/3rds per cent of the tort damage suffered by Davis.

QUANTUM

1. The injury occurred on June 9, 1966. Davis returned to work on June 15th. He says that the last day worked was on July 17, 1966. We accept this and find that Davis last worked for Associated Pipe on July 17, 1966. He has not worked since except for five days in 1967. This was for another company.

2. He first went to see Dr. Morris, a general practitioner of Lake Charles, Louisiana. This was on or about July 6, 1966. Dr. Morris prescribed medication but this did not help. Subsequently, Davis went to a chiroprac-

tor for treatment. He received no relief from that source.

3. His "back got so bad" that he consulted Dr. White, a general practitioner of Lake Charles. Dr. White had him admitted to St. Patrick's Hospital on July 19th. Drs. Phillips and Campbell, Lake Charles Orthopedists, were "called in" for consultation purposes. He remained at St. Patrick's for eleven days. Dr. White's diagnosis was made on July 19, 1966: "acute lumbo sacral strain — possible ruptured disc." Dr. Phillips made a diagnosis on July 26, 1966 of a "protruding lumbar disc."

4. On or about September 9, 1966, Davis was referred to Dr. M. E. Faulk, a Neurosurgeon of Beaumont, Texas. A myelogram was made which revealed a defect between L5 and S1 on the right side. On September 21st Dr. Faulk performed surgery and removed a herniated disc at L5 and S1 on the right side. Davis was discharged from the hospital on October 3rd. Dr. Faulk believes that the post-operative recovery was fairly good. He continued to see this gentleman, Mr. Davis, and last saw him in November of 1967. At that time Dr. Faulk was of the opinion that maximum recovery has been attained.

5. Dr. Faulk has expressed what later develops to be the opinion of most of the doctors — namely, that Mr. Davis's need is for improvement in his general anxiety condition. He stated that there was just no sign of any neurological damage. He assessed the patient's major problem to be tension and suspected that this would resolve itself after "settlement of all this

business." As early as March of 1967, Dr. Faulk thought Davis could return to work but avoid heavy or prolonged lifting. This was reiterated on the date of his deposition on January 17, 1968. To quote again from Dr. Faulk's testimony: "One thing I find with these people that are excessively worried is, of course, any time they go back and start doing something they do a little more than they should, they get a little bit sore as you and I would if we went out and did something we hadn't been doing. This discourages them and they give up." He thought the symptoms would gradually resolve if he returned to work. Dr. Faulk added: "He is worried about his back and he's got a suit going on, and all these things, I'm sure, contributed to the tensions."

6. Dr. Robertson is a Neurologist of Houston, Texas. He examined Mr. Davis on August 30, 1967. A neurological examination failed to reveal any abnormality in the muscle volume, muscle tone, or strength in the muscles of the legs, thighs or feet. It also revealed that Davis could walk on his heels and his toes without difficulty and that his reflexes are present and equal with minimum diminution of the right tendon achilles reflex. Dr. Robertson found a painful fatty nodule, superficial to the right sacroiliac joint but did not connect this in any way with the accident. He also found "an anxiety state," and recommended repeat myelography and also electro myelogram. To carry out these recommendations, Davis was sent to Methodist Hospital on or about October 15, 1967. An examination followed and showed only changes which were reasonably explainable by the previous surgery. Davis was discharged from Methodist on October 19th and saw

Dr. Robertson again on December 8th. Dr. Robertson says that Davis told him that sometimes he, Davis, thought he was getting completely well, and then he would revert to the previous pain which dates about two months following his low back surgery. Davis had meanwhile discontinued the prescribed exercises because he felt this made his condition worse. The electro myelogram was also normal. Dr. Robertson's conclusion was that this man was disabled because "I don't believe you would ever get him back to the job, and secondly, if you would, I don't believe he would stay because his complaints would become worse." He found the complaints out of proportion with the findings — that is, they were just not substantiated by what Dr. Robertson found. He believed that Davis had reached maximum recovery by December 8, 1967, but that he does have some disability, orthopedic-wise, which is made worse by a functional instability. His advice to Mr. Davis is "we can't find anything wrong with you except what we have told you, but if you want us to go back and re-explore, we will. Ninety-four percent of the people who have had this operation which Mr. Davis had are able to return to their usual work with an average disability of about 15%. We quote again from Dr. Robertson: "I can't recommend surgery on this man with any enthusiasm because I have no neurological or physical objective findings." Once again, Robertson reiterates the man's anxiety state is a cloud which he finds difficult to penetrate: "Everything about this fellow is 'iffy'."

7. Dr. Brownhill is an orthopedist practicing in Houston, Texas. He examined Mr. Davis on October 17, 1967 at the request of Dr. Robertson. The examina-

tion was carried out at the Methodist Hospital in Houston. Dr. Brownhill saw him for evaluation and diagnostic purposes. He found no detectable muscle weakness or atrophy. X-ray studies revealed no residual. They revealed nothing that was not normal, but did show the previous laminectomy defect. Dr. Brownhill opined that the chief difficulty is just a post-operative problem, intervertebral, and that the best thing for him to do was to take prescribed exercises. Dr. Brownhill does not believe that Davis can do work that involves extreme motion of the spine and that his disability to this extent was more or less permanent. He did not believe that operative intervention in the form of a re-exploration and/or spinal fusion was indicated.

MAINTENANCE AND CURE

1. There is considerable evidence that plaintiff reached maximum cure in November of 1967; but we believe it more realistic to find that he reached maximum cure on December 18, 1967. We do so find.

2. Davis is entitled to $8.00 per day as maintenance from July 18, 1966 until December 18, 1967, or a total of 518 days totalling the sum of $4,144.00.

3. He has received $4,475 as compensation payments from his employer. This is to be offset against the $4,144. Thus no further maintenance is owed, and Associated Pipe Line is due a credit of $331.00.

4. Plaintiff was also entitled to be compensated on a 100% basis for medical expenses until he reached maximum cure. This, like maintenance, is not to be

reduced because of contributory negligence. These expenses, as best I can ascertain from the record, amounted to $3,233.18, and have been paid.

5. We do not hold that Davis can never obtain any gainful occupation. The consensus of medical opinion is that his major difficulty may be functional, but it is clear that his chances of obtaining employment as a heavy laborer or seaman are lessened and his ability to perform heavy labor is greatly diminished.

6. The award of damages for personal injuries is of necessity somewhat arbitrary and varies greatly with the facts and circumstances of each case. In trying to assess the amount of future loss of earnings as well as probable future pain and suffering, the totality of circumstances must be considered. After a careful consideration of all the factors involved in this case, most of which have been enumerated, it is concluded that plaintiff has been damaged in the sum of $45,000 for all elements of damage resulting from this accident (save and except those items connected with maintenance and cure). This sum of $45,000 includes (1) loss of past wages, (2) future medical expenses, (3) present, past and future pain and suffering, and (4) any and all other damage of any kind resulting from this accident. Having found Davis contributorily negligent to the extent of 33-1/3%, defendants are liable under this finding for $30,000.

Summarizing:

Maintenance and Cure	$ 7,708.18
Other damage (see 5, supra)	45,000.00
	$52,708.18

7. The maintenance and cure has been paid. The $45,000 must be reduced by one-third, leaving a total recovery of $30,000, with interest thereon from date of judicial demand until paid.[1]

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter under the Jones Act and under its general maritime jurisdiction. Venue is properly laid in the Western District of Louisiana.

2. It has been settled law since *The Osceola*, 189 U.S. 158, was decided — that the vessel and its owner and operator are liable to indemnify a seaman for injuries caused by unseaworthiness of the vessel or its appliances and equipment. Mahnick v. Southern SS Co., 321 U.S. 96.

3. The duty to provide a seaworthy vessel encompasses the affording to a seaman of a reasonably safe means of boarding and departing from the vessel. Superior Oil Co. v. Trahan, 204 F. Supp. 627, aff'd 5th Circuit 322 F. 2d 234.

4. This duty to provide a seaman a seaworthy vessel and a safe place to work (including means of ingress and egress to and from the vessel) is an obligation of the owner of the vessel to the employee of an independent contractor and is also an obligation of the seaman's employer. The owner (McDermott) and the

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[1]Associated Pipe Line is due a credit of $121.

employer (Associated Pipe Line) are liable in solido for a breach of that obligation.

5. The amount of damage which Davis sustained must be reduced in the proportion that his own fault contributed to the happening of the accident. The maintenance and cure awards are not to be and have not been so reduced.

There should be judgment in accordance with these findings and conclusions. There is.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this the 20th day of June, 1968.

(Signed) EDWIN F. HUNTER
UNITED STATES
DISTRICT JUDGE

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

ALVIN E. DAVIS

versus Civil Action No. 12,768

ASSOCIATED PIPE LINE CONTRACTORS, INC.;
TRAVELERS INSURANCE COMPANY; and
J. RAY MC DERMOTT & COMPANY, INC.
Third Party Defendant:

OFFSHORE CREWBOATS, INC.

Filed: Jun. 21, 1968

JUDGMENT

This case was tried to the Court.

For written reasons this day set forth in the attached opinion:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of Alvin E. Davis and against Associated Pipe Line Contractors, Inc. and J. Ray McDermott Company, Inc., in solido, in the full sum and amount of $30,000, together with legal interest theron from date of judicial demand until paid.[1]

THUS DONE AND SIGNED on this the 20th day of June, 1968, at Lake Charles, Louisiana.

(Signed) EDWIN F. HUNTER
UNITED STATES
DISTRICT JUDGE

[1]Associated Pipe Line is entitled to a credit of $121.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27475

ALVIN E. DAVIS,
Plaintiff-Appellee-Cross Appellant,

versus

ASSOCIATED PIPE LINE CONTRACTORS, INC.,
TRAVELERS INSURANCE COMPANY, and
J. RAY McDERMOTT & COMPANY, INC.,
Defendant-Third Party Plaintiff-
Appellant-Cross Appellee,

versus

OFFSHORE CREWBOATS, INC.,
Third Party Defendant-Appellee.

Appeals from the United States District Court for the
Western District of Louisiana

(November 13, 1969)

Before RIVES, BELL and DYER, Circuit Judges.

PER CURIAM: We are convinced that the carefully written opinion of the District Court, ___ F.Supp. ___, correctly disposes of all the issues raised on appeal by the respective parties. The judgment is

AFFIRMED.

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

ALVIN E. DAVIS,
Plaintiff-Appellee-
Cross Appellant,

versus

ASSOCIATED PIPE LINE CONTRACTORS, INC.,
TRAVELERS INSURANCE COMPANY and
J. RAY McDERMOTT & COMPANY, INC.,
Defendant-Third Party Plaintiff-
Appellant-Cross Appellee,

versus

OFFSHORE CREWBOATS, INC.,
Third Party Defendant-Appellee.

PETITION FOR REHEARING

TO THE HONORABLE JUDGES OF SAID COURT:

Appellants, Associated Pipe Line Contractors, Inc., Travelers Insurance Company and J. Ray McDermott & Company, Inc., respectfully petition this Honorable Court for a rehearing of the appeal in this cause and as grounds therefor, would show as follows:

1.

While the Per Curiam does not comment on any issue raised by the appeal, appellants earnestly submit that the District Court employed a higher standard of care than that previously applied and as is set out in *Mitchell v. Trawler Racer,* 362 U.S. 539, 80 S.Ct. 926 (1960).

2.

In its findings of fact the Court observes: "The Court feels that there is just no safe way to transfer personnel from it (the barge) to a small crewboat in heavy seas under the total circumstances." The District Court while finding the means unreasonable does not suggest any "norm" or standard from which there was deviation. The testimony was unchallenged that the means of transfer used here is universally used by all offshore pipeline barges and all other known methods instead of being less hazardous, are in fact more so.

3.

It is further submitted that several combination of factors cited by the District Court in Paragraph 17, of the findings of fact did not in fact play any part in the Court's essential holding that the tire ladder in universal use was unseaworthy. For example, the Court observes that the crewboat was brought along the windward side of the barge. However, in Paragraph 20, the Court gives credit to plaintiff's statement that the stern of the crewboat had drifted out, implying an almost total absence of wind.

4.

The evidence in the record is uncontradicted that the tire ladder employed here resulted from years of testing and experience by the barge owner. The evidence is uncontradicted that thousands of transfers had been made by the use of this method without mishap. The District Court accepted and found as a fact (Paragraph 20) that 79 employees had used the ladder just prior to Davis' use. Not one of those fellow workers was brought forward by the plaintiff to testify that conditions on the day of the accident were in any way unusual.

5.

The conclusion reached by the District Court and affirmed by this Honorable Court is that the barge owner is the absolute guarantor of the safety of every seaman which transcends the holding in *Mitchell v. Trawler Racer*, supra, and *Walker v. Harris*, CCCA, 5 Cir., 1964, 335 F. 2d 185.

Respectfully submitted,

HOLT & WOODLEY
Attorneys for Appellants

December 4, 1969

/s/ EDMUND E. WOODLEY
EDMUND E. WOODLEY
708 Pioneer Building
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CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing petition for rehearing has this day been served upon opposing counsel, addressed as follows, by depositing same in the U. S. Mail, postage prepaid:

Mr. Wm. B. Baggett
1130 Pithon Street
P. O. Box 1645
Lake Charles, Louisiana

Mr. Francis Emmett
2141 International Trade Mart
2 Canal Street
New Orleans, Louisiana

Lake Charles, Louisiana, December 4, 1969.

/s/ EDMUND E. WOODLEY
EDMUND E. WOODLEY

APPENDIX D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27475

ALVIN E. DAVIS,
Plaintiff-Appellee-
Cross Appellant,

versus

ASSOCIATED PIPE LINE CONTRACTORS, INC.,
TRAVELERS INSURANCE COMPANY; and
J. RAY McDERMOTT & COMPANY, INC.,
Defendant-Third Party Plaintiff-
Appellant- Cross Appellee,

versus

OFFSHORE CREWBOATS, INC.,
Third Party Defendant-Appellee.

Filed: Dec. 16, 1969

Appeals from the United States District Court for the
Western District of Louisiana

Before RIVES, BELL and DYER, Circuit Judges.

BY THE COURT: IT IS ORDERED that the motion of appellees to vacate the order entered by the Clerk of this Court granting an extension of time for appellants to file a petition for rehearing in the above entitled and numbered cause be, and the same is hereby denied.

IT IS FURTHER ORDERED that the petition for rehearing filed in the above styled cause is hereby denied.